

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

SHA'TON M.,
Appellant,

v.

DEPARTMENT OF CHILD SAFETY, M.M., AND S.M.,
Appellees.

No. 2 CA-JV 2018-0073
Filed December 10, 2018

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.

NOT FOR PUBLICATION

See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Civ. App. P. 28(a)(1), (f);
Ariz. R. P. Juv. Ct. 103(G).

Appeal from the Superior Court in Cochise County
No. JD201500080
The Honorable James L. Conlogue, Judge

AFFIRMED

COUNSEL

Harriette P. Levitt, Tucson
Counsel for Appellant

Mark Brnovich, Arizona Attorney General
By Laura J. Huff, Assistant Attorney General, Tucson
Counsel for Appellee Department of Child Safety

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MEMORANDUM DECISION

Presiding Judge Vásquez authored the decision of the Court, in which Judge Espinosa and Judge Brearcliffe concurred.

V Á S Q U E Z, Presiding Judge:

¶1 Appellant Sha'ton M. challenges the juvenile court's order of March 15, 2018, terminating his parental rights to his children, S.M. and M.M., on the ground of his inability to remedy the circumstances causing the children to remain in a court-ordered, out-of-home placement for longer than fifteen months. *See* A.R.S. § 8-533(B)(8)(c). On appeal, Sha'ton challenges the sufficiency of the evidence to sustain the statutory ground for severance and to establish that terminating his parental rights was in the children's best interests.

¶2 Before it may terminate a parent's rights, a juvenile court must find by clear and convincing evidence that at least one statutory ground for severance exists and must find by a preponderance of the evidence that terminating the parent's rights is in the best interests of the child. *See* A.R.S. §§ 8-533(B), 8-537(B); *Kent K. v. Bobby M.*, 210 Ariz. 279, ¶ 41 (2005). We will affirm an order terminating parental rights unless we must say as a matter of law that no reasonable person could find those essential elements proven by the applicable evidentiary standard. *See Denise R. v. Ariz. Dep't of Econ. Sec.*, 221 Ariz. 92, ¶ 10 (App. 2009). We view the evidence in the light most favorable to upholding the court's order. *Manuel M. v. Ariz. Dep't of Econ. Sec.*, 218 Ariz. 205, ¶ 2 (App. 2008).

¶3 When S.M. and M.M. were born in September 2015, they tested positive for cocaine and marijuana, and the Department of Child Safety (DCS) opened a voluntary dependency as to both parents. Sha'ton failed to participate in services and pleaded no contest to the allegations in DCS's dependency petition.

¶4 Sha'ton was to participate in various services, including substance-abuse assessment, treatment, and testing; parenting classes; parent-aide services; individual counseling; family-violence and anger-management services; psychiatric and psychological evaluations; and supervised visits. Sha'ton participated in or completed substance-abuse treatment, parenting classes, parent-aide services, domestic-violence

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classes, and individual counseling. In hair-follicle tests, however, Sha'ton tested positive for cocaine, opiates, and marijuana. And although he became a registered patient for medical marijuana, he did not provide DCS with information about his certifying physician.

¶5 As a result of substance exposure, the children had substantial medical problems. Sha'ton, however, failed to recognize or understand the children's issues. In his psychological evaluation, Sha'ton was also found to lack "insight" into his situation and believed he was a "perfect father," despite having had parental rights to other children severed and the current situation. He was diagnosed with "a rather pernicious antisocial personality and substance use disorder" that caused him to be "incapable of sanctioning a healthy, stable and safe household."

¶6 DCS filed a motion to terminate Sha'ton's parental rights in March 2017, alleging substance-abuse and time-in-care grounds for severance. Sha'ton was convicted of animal cruelty in November 2017 and sentenced to 1.75 years' incarceration, to be followed by a nine-year term of probation. The juvenile court concluded DCS had established the time-in-care ground, finding that although Sha'ton had made progress, "he was unable to achieve necessary treatment goals prior to his incarceration" and that his incarceration would further delay the children's "stability and permanency," to their detriment.

¶7 On appeal, Sha'ton argues there was insufficient evidence to establish the ground for severance—that the children had been in court-ordered, out-of-home care for more than fifteen months. In challenging the juvenile court's finding that he had been unable to remedy the circumstances causing his children to remain in out-of-home care for more than fifteen months, Sha'ton relies on favorable testimony but does not address the contrary evidence cited by the court. We do not, however, reweigh the evidence, *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, ¶ 12 (App. 2002), and will defer to the court's resolution of conflicting inferences when supported by the record, *see In re Pima Cty. Adoption of B-6355 & H-533*, 118 Ariz. 111, 115-16 (1978), as is the case here as detailed above.

¶8 Sha'ton further contends the evidence was insufficient to establish that termination of his parental rights was in the children's best interests. "At the best-interests stage of the analysis, 'we can presume that the interests of the parent and child diverge because the court has already found the existence of one of the statutory grounds for termination by clear and convincing evidence.'" *Alma S. v. Dep't of Child Safety*, 245 Ariz. 146,

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¶ 12 (2018) (quoting *Kent K.*, 210 Ariz. 279, ¶ 35). Thus, the juvenile court's focus must be on the child's interests instead of the parent's, and "[t]he 'child's interest in stability and security' must be the court's primary concern." *Id.* (quoting *Demetrius L. v. Joshlynn F.*, 239 Ariz. 1, ¶ 15 (2016)). Accordingly, "termination is in the child's best interests if either: (1) the child will benefit from severance; or (2) the child will be harmed if severance is denied." *Id.* ¶ 13.

¶9 That a child's current placement is meeting the child's needs is a proper factor for the juvenile court to consider in determining a child's best interests. See *Audra T. v. Ariz. Dep't of Econ. Sec.*, 194 Ariz. 376, ¶ 5 (App. 1998). And, "[w]hen a current placement meets the child's needs and the child's prospective adoption is otherwise legally possible and likely, a juvenile court may find that termination of parental rights, so as to permit adoption, is in the child's best interests." *Demetrius L.*, 239 Ariz. 1, ¶ 12.

¶10 In this case, the children were placed with their maternal grandparents. Evidence was presented that the grandparents were meeting the children's special needs and that they wished to adopt them. The family's child-safety specialist further testified that severance and adoption would allow the children to avoid neglect due to "substance abuse issues by both parents" and allow them to be "raised in a stable, loving permanent environment, who is able to meet their needs." Thus, there was sufficient evidence that severance was in the children's best interests.

¶11 For these reasons, we affirm the juvenile court's order terminating Sha'ton's parental rights.